Supreme Court, U.S.
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No. 00-791

In The

Supreme Court of the United States

BASTROP COUNTY, TEXAS,

Petitioner,

v.

BOBBY JOE JANES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

Respondent shows unto this Honorable Court that the Fifth Circuit's Opinion in this case does not conflict with the decisions of any other United States Courts of Appeal and follows the law as previously decided by this Honorable Court. The issues are all "jail conditions" issues and do not raise important Federal Questions. There is no conflict within the Fifth Circuit. Where there is no established law in the Fifth Circuit on one issue, the Court relies on and follows the law in the Seventh and Eighth Circuits which is specific to that one issue.

STATEMENT OF THE CASE

Petitioner, Bastrop County, misrepresents the facts necessary to understand their issues and arguments. The Fifth Circuit referred to and discussed some of those facts in its opinion. See Petitioner's Appendix A, p. 2a.

On September 22, 1995, Respondent, Bobby Joe Janes, was arrested for traffic offenses. He was immediately placed in the multiple occupancy tank which housed more than fifteen (15) repeat felony offenders, many who had been formally sentenced to the Texas Department of Criminal Justice and were awaiting transport. Respondent was on probation for Driving While Intoxicated and a warrant, based upon a motion to revoke his probation, was also filed on him after several days of being in the multiple offender tank. Bastrop County's jail classification policy only separated first offenders from others and women from men. The trial evidence showed that the only classification utilized was separation of males from

females. The trial judge noted in his order that Respondent, when he was a first time offender, was put in multiple offender housing. See Petitioner's Appendix B, p. 10a, footnote 2.

On September 25, 1995, Janes observed other inmates in his tank approach an inmate, who was asleep in his bunk. They used sheets and tied the inmate to the four corners of his bed and committed various assaults upon him. Afterwards, they released the inmate. Hours later, Janes awoke from his sleep to find the same inmates tying his hands and feet to his bunk with sheets. Janes struggled and broke loose and ran from his cell to the front door of the tank and yelled for the attention of the Jailer on duty. Janes explained the efforts made to physically tie him to his bunk and requested to be moved from that tank. The Jailer, employed less than forty (40) days in the jail, called to his supervisor, Hoffman, and conveyed Janes' request to be moved. Communications between the officer, Janes and Hoffman continued for approximately fifteen (15) minutes with Janes, on his knees, begging through the metal food opening to be removed. One of the inmates, a multiple offender with numerous convictions for violent offenses, ran up behind Respondent and kicked him in the back of the head as he kneeled begging to be transferred. That kick caused Respondent's face to hit the plexiglass in the door and knocked some teeth out while forcing other teeth into the jawbone. At seeing this, the Jailer called back to Hoffman and was advised to wait for assistance. Once Hoffman and other officers arrived, more than fifteen (15) minutes after Janes' initial outcry, Janes was removed from the cell.

Respondent, Bobby Janes, filed suit against James Hoffman, Individually and in His Official Capacity. Respondent alleged that Hoffman was individually responsible because he refused to remove Janes from the cell after having actual knowledge that Janes was being tied and assaulted and feared for his safety. The jury charge included one question on the individual liability of James Hoffman with a second question on the official liability of James Hoffman. The Jury found that Hoffman was not liable in his individual capacity but was liable because of custom, policy and practice in the Bastrop County Jail. The trial testimony, from county jailers and other employees, acknowledged that inmate fights and abuses were a daily activity throughout the entire jail. They also admitted that their jobs did not allow them to take any actions to protect inmates other than observing the inmates on an hourly basis and removing them only after inmates had suffered abuse.

Janes was released from jail after the assault and filed his lawsuit on July 25, 1997, a time when he was not incarcerated or a prisoner in any jail. After presentation of evidence, the Jury returned a verdict against Hoffman in his Official Capacity and the court awarded attorney's fees. Bastrop County opposed the fee award and alleged that the Prison Litigation Reform Act applied to the amount of fees awarded. The Court refused to apply the PLA and the County appealed.

ARGUMENTS

BASTROP COUNTY'S ARGUMENT NO. 1:

1. In conflict with its other recent decisions, the Fifth Circuit's opinion has inexplicably lowered the Standard for establishing county liability for an attack on a prisoner by another prisoner.

RESPONDENT'S RESPONSE:

The Fifth Circuit's opinion comports with every other circuit and this Court. Bastrop County refuses to accept the fact that this is a condition of confinement and not an episodic case.

Petitioner, Bastrop County, ignores the clear findings of the Court which are based upon the evidence in this case. They characterize Janes' complaint as an episodic act or omission case. This first issue and all their arguments are based entirely on their misguided belief that Bobby Janes is not complaining about the jail conditions which led to his injuries.

The trial court clearly found this suit to be one challenging the conditions of confinement in the Bastrop County Jail. The trial judge wrote "this is not a pre-trial detainee, episodic act case". See Petitioner's Appendix B, p. 9a. The Court found the lawsuit to be "a constitutional attack on general conditions, practices, rules, or restrictions of the jail." The Court agreed that the "evidence shows that Bastrop County had actual knowledge that its housing pattern and practice had continuously resulted in violent inmates assaulting non-violent inmates and

took no corrective action". See Petitioner's Appendix B, p. 7a. The Fifth Circuit agreed and affirmed.

In a jail conditions case, Bobby Janes only needed to show that he was incarcerated under conditions posing a substantial risk of serious harm and that the prison officials acted with subjective deliberate indifference to his health and safety. *Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 1977-79 (1994). There is absolutely no need, in a general condition case under the Eighth Amendment, for the Jury to find individual liability against Hoffman before proceeding to find official liability against Bastrop County. The Fifth Circuit correctly concluded that "Janes only needed to prove that the policy maker knew that there was a substantial risk of serious harm to the inmates under his policy or custom of housing all manners of inmates together". *Hare v. City of Corrinth, Mississippi*, 74 F.3d 633, 650 (5th Cir. 1996). A governmental entity can be liable under Section 1983 even though no government official was found personally liable. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S. Ct. 1292 (1992). When a plaintiff challenges the general conditions of confinement, we assume, by the municipality's very promulgation and maintenance of the complained-of condition, that it intended to cause the alleged constitutional deprivation. *Flores v. County of Hardeman* 124 F.3d 736, 738 (5th Cir. 1997).

The Order of the Fifth Circuit Court of Appeals does not conflict with any U.S. or State cases and does not call for a review by this Honorable Court.

ARGUMENT

BASTROP COUNTY'S ARGUMENT NO. 2:

2. The Fifth Circuit's opinion conflicts with prior decisions of this Court in that it affords greater protection to a convicted prisoner than a pretrial detainee, when this Court has firmly stated that pretrial detainees are due protections at least equal to those of convicted prisoners.

RESPONDENT'S RESPONSE:

The Petitioner mistakes the Law that is applicable to these facts. The Fifth Circuit follows correct law.

Pretrial detainees possess a clearly established constitutional right to be free from punishment. *See Bell v. Wolfish,* 441 U.S. 520, 534-37, 99 S. Ct. 1861, 1871-73, (1979) The Supreme Court has held that a pretrial detainee's claims of unconstitutional conditions of confinement are analyzed under the Fourteenth Amendment's guarantee of due process of law, as opposed to the Eighth Amendment's prohibition of cruel and unusual punishment, which applies only to sentenced inmates. *Id.* A "condition of confinement" case is a "constitutional attack on general conditions, practices, rules, or restrictions of pretrial confinement". *Scott v. Moore,* 114 F.3d 51, 53 (5th Cir. 1997).

Bobby Joe Janes was a convicted prisoner who was on probation. His rights stem from the Eighth Amendment's prohibition on cruel and unusual punishment. See *Estelle v. Gamble,* 429 U.S. 97, 104; 97 S. Ct. 285 291 (1976). Liability of jail officials to him is assessed under *Farmer,*

511 U.S. at 831-833; 114 S. Ct. at 1976. The rights of a pre-trial detainee flow from the due process guarantees of the Fourteenth Amendment, and the liability of jail officials to pre-trial detainees is assessed under *Hare v. City of Corrinth, Mississippi. Id.* The courts have clearly stated that the State owes the same duty, under the due process clause and the Eighth Amendment, to provide both pre-trial detainees and convicted inmates with basic human needs including medical care and protection from harm during their confinement and subsequent case law continues to distinguish between cases involving convicted inmates and pre-trial detainees and the different basis from which their constitutional rights flow.

Contrary to Petitioner's assertion that the Fifth Circuit ignored the County's first issue and arguments, the Appeals Court agreed with the District Court ruling that individual liability of Hoffman was not the issue. The issue was protection under the Eighth Amendment from policies and practices which were harmful to Respondent, Bobby Janes. The correct issue before the jury, which was affirmed by the Fifth Circuit, was the unconstitutional jail conditions.

ARGUMENT

BASTROP COUNTY'S ARGUMENT NO. 3:

3. The Fifth Circuit's opinion ignored the necessity for a causal link between an act or omission by the County and the risk that Janes would be injured.

RESPONDENT'S RESPONSE:

The Fifth Circuit's opinion did speak to this issue.

The proof presented by Respondent met the legal requirement for county liability as expressed in *Hare v. City of Corrinth, Mississippi.* The Jury found that link to be sufficient to answer the jury charge questions and make the link or connection between the injury to Respondent and the policies, practices and procedures inside the Bastrop County Jail. The Jury made an affirmative finding that Defendant Hoffman, in his Official Capacity, and thus, Bastrop County had actual knowledge that Plaintiff was incarcerated under conditions posing him a substantial risk of serious harm and that the Defendants acted with subjective deliberate indifference to Plaintiff's safety and health. The Fifth Circuit spoke of evidence which showed that the Sheriff's policy was to leave the inmates to self-defense unless an officer on a hourly round learned of abuse and obtained a superior's consent to do more to protect the inmates. The court discussed the continuous fighting and abuses within the cell as well as the admitted fact that the jailers expected the prisoners to fight and abuse one another. The sheriff's policy was to house dangerous inmates with non-violent inmates. The

sheriff's policy allowed helpless inmates, such as Janes, to be abused and assaulted by other inmates on a daily basis without protection. Fights were the order of the jail and it was clear that the Sheriff was necessarily deliberately indifferent to the protections and safety of Respondent.

The findings of the Fifth Circuit are in compliance with decisions in all U.S. Appeal Courts and this Court on these issues.

ARGUMENT

BASTROP COUNTY'S ARGUMENT NO. 4:

4. The Fifth Circuit's opinion erroneously refused to apply the attorney's fees provision of the PLRA to Janes' claims simply because he was no longer a prisoner at the time he filed his claim. This interpretation, although followed by some other appellate courts, is contrary to the meaning and intent of the statute. This Court has not yet addressed the relevant time period to determine whether a person is a prisoner within the meaning of the act.

RESPONDENT'S RESPONSE:

The Fifth Circuit's opinion follows other cases in the Fifth Circuit as well as other circuits.

The Fifth Circuit opinion agrees with earlier opinions by the Seventh and Eighth Circuits on this issue. There are no opinions which conflict with the opinion issued in this case. The definition of the word "prisoner" as used in

the Prison Litigation Reform Act as well as all applications of that word make clear that the holding of the trial court, which was affirmed by the Fifth Circuit, are all in total agreement with the interpretations given to *Subsection D of 42 U.S.C. Section 1997 E.* Since this order agrees with all other U.S. Appeals Courts in this matter, Petitioner would ask this Court to reject this application for writ on this issue.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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